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**From:**

**Sent:** Wednesday, March 9, 2011 11:32 AM

**To:**

**Cc:**

**Subject:** Imported Trucks

Perhaps the attached explanation will persuade you that there is not a conflict between example 2 in section 48.4221-3(a)(2) and Rev. Rul. 85-95 and that Scenario 3 is consistent with example 2 and distinguishable from Rev. Rul. 85-95. If you have any questions or comments, please contact me by email.

, I'll get back to you later on scenarios 4 & 5.

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ATTACHMENT:

**Imported Trucks**

Factual distinction between the sale in the second example in § 48.4221-3(a)(2) (example) and the sale in Rev. Rul. 85-95 (rev. rul.) and its consequences.

In the example, U.S. manufacturer sold a truck to a company in France. This otherwise taxable sale was tax free because § 4221(a)(2) provides that the § 4051 tax does not apply to a sale of a taxable article (in this case a truck) for export. Section 4221 would not apply in the absence of an underlying taxable sale which the section can render tax free.

In the rev. rul., a U. S. manufacturer sold a truck for export to a dealer. A sale to a dealer is not a taxable sale because it does not meet the definition of a first retail sale in § 4052. Section 4052(a)(1) defines the term "first retail sale" as the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation. A sale to a dealer is a sale for resale, not a retail sale. Therefore, there was not a taxable sale prior to the truck being exported.

Although there is a truck sale in the United States prior to the truck's export in the example and in the rev. rul., the two sales are different from one another. The sale in the example was a taxable sale that § 4221(a)(2) exempted from tax. The sale in the

rev. rul. was not a taxable sale because a sale to a dealer is a sale for resale, not a taxable first retail sale as defined in § 4052(a)(1). Therefore, the sale of the used truck after its importation into the United States was the first, and only, opportunity to tax the sale of the truck. The rev. rul. does not contradict or conflict with the example; rather, the rev. rul. is factually distinguishable from the example.

Accordingly, scenario 3 does not conflict with the rev. rul. Unlike the rev. rul. where there was not a taxable sale in the United States prior to export, in scenario 3 and the example there was a taxable sale (although exempt under § 4221) prior to the truck being exported. The distinction between a taxable sale (albeit tax free) prior to export and a nontaxable sale prior to export is important because the characterization of the sale prior to export determines whether a truck that was previously sold in the United States is taxable when subsequently imported into the United States.